REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NOS.7421-7422 OF 2008

SHEHAMMAL … **PETITIONER**

Vs.

HASAN KHANI RAWTHER & ORS. … **RESPONDENTS**

WITH

SLP(C)NOS.14303-14304 OF 2008

J U D G M E N T

ALTAMAS KABIR, J.

1. Special Leave Petition (Civil) Nos.7421-7422 of 2008 filed by one Shehammal and Special Leave Petition (Civil)

Nos.14303-14304 of 2008 filed by one Amina and others, both directed against the final judgment and order dated 18.10.2007 passed by the Kerala High Court in R.F.A.No.75 of 2004 (B) and R.F.A.No.491 of 2006, have been taken up together for final disposal. The parties to the aforesaid SLPs, except for the Respondent No.6, Hassankhan, are siblings. While the petitioner in SLP(C)Nos.7421-7422 of 2008 is the daughter of Late Meeralava Rawther, the Respondent No.1, Hassan Khani Rawther, and the Respondent Nos.2 and 5 are the sons and the Respondent Nos.3 and 4 are the daughters of the said Meeralava Rawther. The Respondent No.6, Hassankhan, is a purchaser of the shares of the Respondent Nos.2 and 5, both heirs of Late Meeralava Rawther. The remaining respondents are the legal heirs of Muhammed Rawther, the second respondent before the High Court. The petitioner in SLP(C)Nos.7421-7422 of 2008 is the plaintiff in O.S.No.169 of 1994 and the third defendant in

O.S.No.171 of 1992, filed by Hassan Khani Rawther, is the Respondent No.1 in all the four SLPs.

2. Meeralava Rawther died in 1986, leaving behind him surviving three sons and three daughters, as his legal heirs. At the time of his death he possessed 1.70 acres of land in Survey No.133/1B of Thodupuzha village, which he had acquired on the basis of a partition effected in the family of deceased Meeralava Rawther in 1953 by virtue of Deed No.4124 of Thodupuzha, Sub-Registrars Office. Meeralava Rawther and his family members, being Mohammedans, they are entitled to succeed to the estate of the deceased in specific shares as tenants in common. Since Meeralava Rawther had three sons and three daughters, the sons were entitled to a 2/9th share in the estate of the deceased, while the daughters were each entitled to a 1/9th share thereof.

3. It is the specific case of the parties that Meeralava Rawther helped all his children to settle down in life. The

youngest son, Hassan Khani Rawther, the Respondent No.1, was a Government employee and was staying with him even after his marriage, while all the other children moved out from the family house, either at the time of marriage, or soon, thereafter. The case made out by the Respondent No.1 is that when each of his children left the family house Meeralava Rawther used to get them to execute Deeds of Relinquishment, whereby, on the receipt of some consideration, each of them relinquished their respective claim to the properties belonging to Meeralava Rawther. The Respondent No.1, Hassan Khani Rawther, was the only one of Meeralava Rawther's legal heirs who was not required by his father to execute such a deed.

4. Meeralava Rawther died intestate in 1986 leaving 1.70 acres of land as his estate. On 31st March, 1992, the Respondent No.1, Hassan Khani Rawther filed O.S.No.171 of 1992 before the Court of Subordinate Judge, Thodupuzha, seeking declaration of title, possession and injunction in

respect of the said 1.70 acres of land, basing his claim on an oral gift alleged to have been made in his favour by Meeralava Rawther in 1982.

5. On 6th April, 1992, the Respondent No.2, Muhammed Rawther, one of the brothers, filed O.S.No.90 of 1992 before the Court of Munsif, Thodupuzha, praying for injunction against his brother, Hassan Khani Rawther, in respect of the suit property. The said suit was subsequently transferred to the Court of Subordinate Judge, Thodupuzha, and was renumbered as O.S.No.168 of 1994.

6. On the basis of her claim to a 1/9th share in the estate of Late Meeralava Rawther the petitioner, Shehammal filed O.S.No.126 of 1992 on 25th May, 1992, seeking partition of the plaint properties comprising the same 1.70 acres of land in respect of which the other two suits had been filed. The said suit was also subsequently transferred to the Court of Subordinate Judge, Thodupuzha, and was renumbered as

O.S.No.169 of 1994 and was jointly taken up for trial along with O.S.No.171 of 1992. By a common judgment dated 15.11.1996, the learned Trial Judge dismissed O.S.No.171 of 1992 filed by the Respondent No.1, for want of evidence. O.S.No.169 of 1994 filed by Shehammal was decreed and in view of the findings recorded in O.S.No.169 of 1994, the trial court dismissed O.S.No.168 of 1994 filed by Muhammed Rawther, the Respondent No.2 herein. A subsequent application filed by the plaintiff in O.S.No.171 of 1992 for restoration of the said suit and another application for setting aside the decree in O.S.No.169 of 1994, were dismissed by the trial court.

7. The Respondent No.1 herein, Hassan Khani Rawther, moved the High Court by way of C.M.A.Nos.191 of 2000 and 247 of 2000 and the High Court by its judgment dated 17.1.2003 set aside the decree in O.S.Nos.171 of 1992 and 169 of 1994 and directed the trial court to take back O.S.Nos.171 of 1992 and 169 of 1994 to file and to dispose of the same on

merits. On remand, the learned Subordinate Judge dismissed O.S.No.171 of 1992, disbelieving the story of oral gift propounded by the Respondent No.1. The matter was again taken to the High Court against the order of the learned Subordinate Judge. The Respondent No.1 filed R.F.A.Nos.75 of 2004 and 491 of 2006 in the Kerala High Court and the same were allowed by the learned Single Judge holding that even if the plaintiff failed to prove the oral gift in his favour, he could not be non-suited, since he alone was having the rights over the assets of Meeralava Rawther in view of the various Deeds of Relinquishment executed by the other sons and daughters of Meeralava Rawther.

8. Being aggrieved by the judgment of reversal passed by the learned Single Judge of the High Court, the petitioners herein in the four Special Leave Petitions have questioned the validity of the said judgment.

9. Appearing for the Petitioners in both the SLPs, Mr. M.T. George, learned Advocate, submitted that the impugned judgment of the High Court was based on an erroneous understanding of the law relating to relinquishment of right in a property by a Mohammedan. It was submitted that the High Court had failed to truly understand the concept of *spes successionis* which has been referred to in paragraph 54 of Mulla's "Principles of Mahomedan Law", which categorically indicates that a Muslim is not entitled in law to relinquish an expected share in a property. Mr. George submitted that the said doctrine was based on the concept that the Mohammedan Law did not contemplate inheritance by way of expectancy during the life time of the owner and that inheritance opened to the legal heirs only after the death of an individual when right to the property of the legal heirs descended in specific shares. Accordingly, all the Deeds of Relinquishment executed by the siblings, except for the Respondent No.1, were void and were not capable of being

acted upon. Accordingly, when succession opened to the legal heirs of Meeralava Rawther on his death, each one of them succeeded to a specified share in his estate.

10. It was also submitted that as a result, the finding of the High Court in R.F.A.No.491 of 2006 that even if the story of oral gift set up by the plaintiff was disbelieved, he would still be entitled to succeed to the entire estate of the deceased, on account of the Deeds of Relinquishment executed by the other legal heirs of Meeralava Rawther, was erroneous and was liable to be set aside. Mr. George contended that the High Court wrongly interpreted the decision of this Court in the case of Gulam Abbas Vs. Haji Kayyum Ali & Ors. [AIR 1973 SC 554]. In the said decision, this Court held that the applicability of the Doctrine of Renunciation of an expectant right depended upon the surrounding circumstances and the conduct of the parties when such a renunciation/relinquishment was made. It was further held that if the expectant heir received

consideration for renouncing his expectant share in the property and conducted himself in a manner so as to mislead the owner of the property from disposing of the same during his life time, the expectant heir could be debarred from setting up his right to what he was entitled. Mr. George submitted that the High Court overlooked the fact that this Court had held that mere execution of a document was not sufficient to prevent the legal heirs from claiming their respective shares in the parental property.

11. Mr. George submitted that apart form the above, the High Court allowed itself to be misled into accepting a "family arrangement" when such a contingency did not arise. The transactions involving the separate Deeds of Relinquishment executed by each of the heirs of Meeralava Rawther, constituted an individual act and could not be construed to be a family arrangement. Mr. George submitted that even if the story made out on behalf of the Respondent No.1, that Meeralava Rawther made each of his children execute Deeds of

Relinquishment on their leaving the family house, is accepted, the same cannot by any stretch of imagination be said to be a family arrangement which had been accepted by all the legal heirs of Meeralava Rawther. Thus, misled into accepting a concept of "family arrangement", the High Court erroneously relied on the decision of the Allahabad High Court in Latafat Hussain Vs. Bidayat Hussain [AIR 1936 All. 573], Kochunni Kochu Vs. Kunju Pillai (1956 Trav – Co 217, Thayyullathil Kunhikannan Vs Thayyullathil Kalliani And Ors. [AIR 1990 Kerala 226] and Hameed Vs Jameela (2004 (1) KLT 586), where it had been uniformly held that when there is a family arrangement binding on the parties, it would operate as estoppel by preventing the parties from resiling from the same or trying to revoke it after having taken advantage of such arrangement. Mr. George submitted that having regard to the doctrine of *spes successionis*, the concept of estoppel could not be applied to Muslims on account of the fact that the law of inheritance applicable to Muslims is derived from

the Quran, which specifies specific shares to those entitled to inheritance and the execution of a document is not sufficient to bar such inheritance. Accordingly, renunciation by an expectant heir in the life time of his ancestor is not valid or enforceable against him after the vesting of the inheritance. Mr. George reiterated that the Deeds of Relinquishment between A2 to A6 could not be treated as a "family arrangement" since all the members of the family were not parties to the said Deeds and his position not having altered in any way, the Respondent No.1 is not entitled to claim exclusion of the other heirs of Late Meeralava Rawther from his estate.

12. In this regard, Mr. George also drew our attention to Section 6 of the Transfer of Property Act, 1882, where the concept of *spes* successionis has been incorporated. It was pointed out that Clause (a) of Section 6 is in *pari materia* with the doctrine of *spes successionis*, as incorporated in paragraph 54 of Mulla's "Principles of Mahomedan Law" and

provides that the chance of a person succeeding to an estate cannot be transferred.

13. In view of his aforesaid submissions, Mr. George submitted that the impugned judgment and decree of the High Court was liable to be set aside and that of the learned Subordinate Judge was liable to be restored.

14. Mr. V. Giri, learned Advocate, who appeared for the Respondent No.1, urged that in view of the three-Judge Bench decision in Gulam Abbas's case (supra), it was not open to the Petitioner to claim that the Doctrine of Estoppel would not be applicable in the facts of this case. Mr. Giri submitted that the view expressed in Gulam Abbas's case (supra) had earlier been expressed by other High Courts to which reference has been made hereinbefore. He urged that all the Courts had taken a consistent view that having relinquished his right to further inheritance, a legal heir could not claim a share in the property once inheritance opened on the death of the owner of the property.

15. Mr. Giri contended that any decision to the contrary would offend the provisions of Section 23 of the Indian Contract Act, 1872, as being opposed to public policy. Mr. Giri urged that the principles of Mahomedan law in relation to the law as incorporated in the Transfer of Property Act and the Indian Contract Act, had been considered in great detail by the three-Judge Bench in Gulam Abbas's case (supra). Learned counsel pointed out that on a conjoint reading of Section 6 of the Transfer of Property Act and paragraph 54 of Mulla's "Principles of Mahomedan Law" it would be quite evident that what was sought to be protected was the right of a Mohammedan to the chance of future succession to an estate. Learned counsel submitted that neither of the two provisions takes into consideration a situation where a right of *spes successionis* is transferred for a consideration. Mr. Giri submitted that in Gulam Abbas's case (supra) the said question was one of the important questions which fell for consideration, since it

had a direct bearing on the question in the light of Section 23 of the Indian Contract Act, 1872. Mr. Giri submitted that the bar to a transfer of a right of *spes successionis* is not an absolute bar and would be dependent on circumstances such as receipt of consideration or compensation for relinquishment of such expectant right in future. Mr. Giri urged that the Special Leave Petitions were wholly misconceived and were liable to be dismissed.

16. From the submissions made on behalf of the respective parties and the facts of the case, three questions of importance emerge for decision, namely:-

(i) Whether in view of the doctrine of *spes successionis*, as embodied in Section 6 of the Transfer of Property Act, 1882, and in paragraph 54 of Mulla's "Principles of Mahomedan Law", a Deed of Relinquishment executed by an expectant heir could operate as estoppel to a claim that may be set up by

the Executor of such Deed after inheritance opens on the death of the owner of the property?

(ii) Whether on execution of a Deed of Relinquishment after having received remuneration for such future share, the expectant heir could be estopped from claiming a share in the inheritance?

(iii) Can a Mohammedan by means of a Family Settlement relinquish his right of *spes successionis* when he had still not acquired a right in the property?

17. Chapter VI of Mulla's "Principles of Mahomedan Law" deals with the general rules of inheritance under Mohammedan law. Paragraph 54 which falls within the said Chapter relates to the concept of transfer of *spes successionis* which has also been termed as "renunciation of a chance of succession". The said paragraph provides that the chance of a Mohammedan heir-apparent succeeding to an estate cannot be said to be the subject of a valid transfer or release. The

same is included in Section 6 of the Transfer of Property Act and the relevant portion thereof, namely, clause (a) is extracted below :-

> **"6. What may be transferred.-** Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.
>
> (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred."

The provisions of Section 6(a) have to be read along with Section 2 of the Act, which provides for repeal of Acts and saving of certain enactments, incidents, rights, liabilities etc. It specifically provides that nothing in Chapter II, in which Section 6 finds place, shall be deemed to affect any rule of Mohammedan Law.

18. Inspite of the aforesaid provisions, both of the general law and the personal law, the Courts have held that the

fetters imposed under the aforesaid provisions are capable of being removed in certain situations. Two examples in this regard are –

(i) When an expectant heir willfully does something which has the effect of attracting the provisions of Section 115 of the Evidence Act, is he estopped from claiming the benefit of the doctrine of *spes successionis*, as provided for under Section 6(a) of the Transfer of Property Act, 1882, and also under the Mohammedan Law as embodied in paragraph 54 of Mulla's "Principles of Mahomedan Law"?

(ii) When a Mohammedan becomes a party to a family arrangement, does it also entail that he gives up his right of *spes successionis.*

The answer to the said two propositions is also the answer to the questions formulated hereinbefore in paragraph 16.

19. The Mohammedan Law enjoins in clear and unequivocal terms that a chance of a Mohammedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release. Section 6(a) of the Transfer of Property Act was enacted in deference to the customary law and law of inheritance prevailing among Mohammedans.

20. As opposed to the above, are the general principles of estoppel as contained in Section 115 of the Evidence Act and the doctrine of relinquishment in respect of a future share in property. Both the said principles contemplated a situation where an expectant heir conducts himself and/or performs certain acts which makes the two aforesaid principles applicable inspite of the clear concept of relinquishment as far as Mohammedan Law is concerned, as incorporated in Section 54 of Mulla's "Principles of Mahomedan Law". Great reliance has been placed by both the parties on the decision in Gulam Abbas's case (supra).

While dealing with a similar situation, this Court watered down the concept that the chance of a Mohammedan heir apparent succeeding to an estate cannot be the subject of a valid transfer on lease and held that renunciation of an expectancy in respect of a future share in a property in a case where the concerned party himself chose to depart from the earlier views, was not only possible, but legally valid. Referring to various authorities, including Ameer Ali's "Mohammedan Law", this Court observed that "renunciation implies the yielding up of a right already vested". It was observed in the facts of that case that during the lifetime of the mother, the daughters had no right of inheritance. Citing the decision in the case of Mt. Khannum Jan vs. Mt. Jan Bibi [(1827) 4 SDA 210] it was held that renunciation implies the yielding up of a right already vested. Accordingly, renunciation during the mother's lifetime of the daughters' shares would be null and void on the ground that an inchoate right is not capable of being transferred

as such right was yet to crystallise. This Court also held that "under the Muslim Law an expectant heir may, nevertheless, be part of a course of conduct which may create an estoppel against claiming the right at a time when the right of inheritance has accrued". It was observed by the learned Judges that the Contract Act and the Evidence Act would not strictly apply since they did not involve questions arising out of Mohammedan Law. This Court accordingly held that the renunciation of a supposed right, based upon an expectancy, could not, by any test be considered "prohibited".

21. This Court ultimately held that the binding force of the renunciation of a supposed right, would depend upon the attendant circumstances and the whole course of conduct of which it formed a part. In other words, the principle of an equitable estoppel far from being opposed to any principle of Mohammedan Law, is really in complete harmony with it.

22. On the question of family arrangement, this Court observed that though arrangements arrived at in order to avoid future disputes in the family may not technically be a settlement, a broad concept of a family settlement could not be the answer to the doctrine of *spes successionis.*

23. There is little doubt that ordinarily there cannot be a transfer of *spes successionis,* but in the exceptions pointed out by this Court in Gulam Abbas's case (supra), the same can be avoided either by the execution of a family settlement or by accepting consideration for a future share. It could then operate as estoppel against the expectant heir to claim any share in the estate of the deceased on account of the doctrine of *spes successionis.* While dealing with the various decisions on the subject, which all seem to support the view taken by the learned Judges, reference was made to the decision of Chief Justice Suleman of the Allahabad High Court in the case of Latafat Hussain Vs. Hidayat Hussain [AIR 1936 All 573], where the question of arrangement

between the husband and wife in the nature of a family settlement, which was binding on the parties, was held to be correct in view of the fact that a presumption would have to be drawn that if such family arrangement had not been made, the husband could not have executed a deed of Wakf if the wife had not relinquished her claim to inheritance. It is true that in the case of Mt. Khannum Jan (supra), it had been held by this Court that renunciation implied the yielding up of a right already vested or desisting from prosecuting a claim maintainable against another, and such renunciation during the lifetime of the mother of the shares of the daughters was null and void since it entailed the giving up of something which had not yet come into existence.

24. The High Court after considering the aforesaid views of the different jurists and the decision in connection with the doctrine of relinquishment came to a finding that even if the provisions of the doctrine of *spes successionis* were

to apply, by their very conduct the Petitioners were estopped from claiming the benefit of the said doctrine. In this context, we may refer to yet another principle of Mohammedan Law which is contained in the concept of Wills under the Mohammedan Law. Paragraph 118 of Mulla's "Principles of Mahomedan Law" embodies the concept of the limit of testamentary power by a Mohammedan. It records that a Mohammedan cannot by Will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of one-third cannot take effect unless the heirs consent thereto after the death of the testator. The said principle of testamentary disposition of property has been the subject matter of various decisions rendered by this Court from time to time and it has been consistently stated and reaffirmed that a testamentary disposition by a Mohammedan is binding upon the heirs if the heirs consent to the disposition of the entire property and such consent could either be express or

implied. Thus, a Mohammedan may also make a disposition of his entire property if all the heirs signified their consent to the same. In other words, the general principle that a Mohammedan cannot by Will dispose of more than a third of his estate after payment of funeral expenses and debts is capable of being avoided by the consent of all the heirs. In effect, the same also amounts to a right of relinquishment of future inheritance which is on the one hand forbidden and on the other accepted in the case of testamentary disposition. Having accepted the consideration for having relinquished a future claim or share in the estate of the deceased, it would be against public policy if such a claimant be allowed the benefit of the doctrine of *spes successionis.* In such cases, we have no doubt in our mind that the principle of estoppel would be attracted.

25. We are, however, not inclined to accept that the methodology resorted to by Meeralava Rawther can strictly be

said to be a family arrangement. A family arrangement would necessarily mean a decision arrived at jointly by the members of a family and not between two individuals belonging to the family. The five deeds of relinquishment executed by the five sons and daughters of Meeralava Rawther constitute individual agreements entered into between Meeralava Rawther and the expectant heirs. However, notwithstanding the above, as we have held hereinbefore, the doctrine of estoppel is attracted so as to prevent a person from receiving an advantage for giving up of his/her rights and yet claiming the same right subsequently. In our view, being opposed to public policy, the heir expectant would be estopped under the general law from claiming a share in the property of the deceased, as was held in Gulam Abbas's case (supra).

26. We are not, therefore, inclined to entertain the Special Leave Petitions and the same are accordingly dismissed, but without any order as to costs.

……J.
(ALTAMAS KABIR)

……J.
(CYRIAC JOSEPH)

……J.
(SURINDER SINGH NIJJAR)

New Delhi
Dated: 02.08.2011